HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 5754/01 (M/S)

Ram Nath, S/o Sri Asa Ram
Vs
The State of Uttar Pradesh & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 6.06.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 5754 (MS) OF 2001
(Old No. 15686/94)

Ram Nath,
S/o Sri Asa Ram,
R/o Qasba Jwalapur,
P.O. Khas, District Haridwar. .....Petitioner.

Versus

1. The State of Uttar Pradesh.
2. The Collector Haridwar.
3. The Addl. Collector 1st Class District-Hardwar.
4. Gram Sabha Village Badshahpur, Sherpur Bhattipur, P.O. Khas, District Hardwar, Sherpur, through its Pradhan. .....Respondents.

Dated: 06.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Alok Singh, Sr. Advocate, assisted by Sri D. Barthwal, Advocate for the petitioner and Standing Counsel for the respondents no. 1 to 4.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 1st April, 1994 and 22.07.1993.

Briefly stated, the proceedings under Section 122-B of the U.P.Z.A. & L.R. Act were initiated against the petitioner by issuing notice under Section 115 in Z.A. Form-49 from the Assistant Collector on the ground that the petitioner has

constructed a wall and thereby encroached an area of 0.26 hectare of plot no. 78/2. Petitioner has given his reply stating therein that the property exclusively belongs to the petitioner and does not belong to Gaon Sabha and it was not a Chak Road but it was passage, which the petitioner has constructed for reaching at Plot No. 76 and 77. Lekhpal was examined on 1st May, 1992 and his statement was recorded.

According to the case of the petitioner, there was no measurement with regard to the property of the Gaon Sabha and as such in absence of any demarcation, the counsel for the petitioner has submitted that the entire proceedings under Section 122-B of the U.P. Z.A. and L.R. Act was wholly illegal. The Assistant Collector vide order dated 22.07.1993 passed the order of eviction. The petitioner went in revision and the revisional Court has confirmed the said finding.

The petitioner has referred the judgment of ***Shankar Saran and others Vs. State of U.P. and others 1987 All. L.J. 877 and Madan Lal and others Vs. The Board of Revenue, U.P. Allahabad and others 1980 All. L.J. 1041.***

In ***Madan Lal and others Vs. The Board of Revenue, U.P. Allahabad and others 1980 All. L.J. 1041,*** it has been held by the Allahabad High Court that if the objections are raised with regard to the title of the Gaon Sabha, the proceedings under Section 122-B are not maintainable. Paragraphs 8 and 9 are quoted below:-

"8. On the facts mentioned in the judgment of the Trial Court it appears that the disputed plot No. 393 has been constituted with the old numbers 949, 950, 951, 952, 953, 954, 955 and 1052. It also appears from thue judgment of the Trial Court that petitioner Smt. Prem Wati had some interest in plots Nos. 955 and 949, hence the objection of petitioner Smt.

Prem Wati that the disputed land is neither tank nor the property of Gaon Sabha does raise a bona fide question of title of Gaon Sabha at least. It is a quite different thing whether the petitioners claimk of tenancy right may not be sustainable in view of the consolidation proceedings or bar of Sec. 49 of the U.P.C.H. Act, but the question whether the disputed property belonged to Gaon Sabha or not itself is a bona fide question and circumstance in the present caser. Even if the petitioners are trespassers, they are liable to eviction only at thue instance of rightful owner. In this view of the matter I find that the revenue courts have patently erred in entertaining the proceedings under Section 122-B of the U.P.Z.A. and L.R. Act against the petitioners.

9. In Ram Raja v. Board of Revenue 1970 RD 156 (1) : (1970 All LJ 416) a learned Single Judge of this Court has held that if the objectors had a triable case the proceedings under Sec. 122-B of the U.P. Z.A. and L.R. Act would be unwarranted."

Similar view has been taken in ***Shankar Saran and others Vs. State of U.P. and others 1987 All. L.J. 877.*** Relevant paragraph no. 13 of the aforesaid judgment is quoted below:-

"13. It is noteworthy that a heavy burden lay upon the Gaon Sabha to prove the damages suffered by it with regard to the disputed land. The revenue courts were required to determine the amount of damages in the light of the evidence on record. To me it appears that the revenue courts have not dealt with the evidence regarding damages in the present case. The fixation of damages appears to me quite excessive and arbitrary. On the aforesaid ground also the impugned judgment suffers from patent error of law."

In view of the aforesaid proposition, the matter is sent back to the Assistant Collector, who shall decide the controversy after making the spot inspection. He shall also demarcate the land. He will also ascertain as to whether any encroachment has been made by the petitioner.

In the light of the aforesaid observations, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

06.06.2006
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